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**AUG 22 1994**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

August 22, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: Pacific Bell's Petition for Rulemaking  
to Amend Section 69.106 of the  
Commission's Rules

Dear Mr. Caton:

Pursuant to Section 1.419 of the Commission's Rules, attached please find an original and 4 copies of the Opposition of the California Bankers Clearing House, Mastercard International, Inc., New York Clearing House Association and Norwest Corporation, ("Financial Services Providers") in the above captioned proceeding. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please call me at 202/223-4980.

Sincerely,

*Colleen Boothby*

Colleen L. Boothby  
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Counsel for  
California Bankers Clearing House,  
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and Norwest Corporation

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of  
Pacific Bell's Petition for Rulemaking  
to Amend Section 69.106 of the  
Commission's Rules

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**AUG 22 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**OPPOSITION OF CALIFORNIA BANKERS CLEARING HOUSE,  
MASTERCARD INTERNATIONAL INCORPORATED, NEW YORK CLEARING  
HOUSE ASSOCIATION, AND NORWEST CORPORATION**

California Bankers Clearing House, MasterCard International  
Incorporated, New York Clearing House Association, and Norwest Corporation  
(hereafter, "the Financial Services Providers") oppose Pacific Bell's petition for a  
rulemaking to amend Section 69.106 of the Commission's Rules, 47 C.F.R.  
§ 69.106 in order to create a per-call local switching charge, which would apply  
in addition to the per-minute charges already contemplated by the Rule. As  
discussed in greater detail below, the change Pacific Bell proposes to Section  
69.106 would require revisions to many other Rule sections as well and should  
therefore be implemented -- if at all -- only as part of a far more comprehensive  
proceeding than that advocated by Pacific Bell. In the absence of such a  
proceeding, the Commission cannot ensure that the per-call charge proposed by  
Pacific Bell would produce the benefits Pacific Bell claims as a justification for  
the charge. In addition, Pacific Bell has failed to demonstrate any need for the  
Rule revisions it seeks.

## **BACKGROUND**

California Bankers Clearing House ("BCH") is an association of financial institutions whose members include seven of the leading banks in California.<sup>1</sup> It serves primarily as a clearing house through which members settle accounts and present checks and other payment instruments. BCH also represents its member institutions in regulatory matters on issues of common concern.

MasterCard International Incorporated ("MasterCard") is a not-for-profit corporation whose service marks are used by 29,000 member banks in 170 countries and territories to provide payment systems and automated teller machine services.

The New York Clearing House Association ("NYCHA") is an association of financial institutions whose members include eleven of the leading banks in New York.<sup>2</sup> It serves as a clearinghouse through which members settle accounts and present checks and other payment instruments. NYCHA also represents its members in regulatory matters on issues of common concern.

Norwest Corporation ("Norwest") is a nationwide, diversified financial services company providing banking, insurance, investments and other financial

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<sup>1</sup> The members of the California Bankers Clearing House are Bank of America, The Bank of California, City National Bank, First Interstate Bank of California, Sanwa Bank of California, Union Bank, and Wells Fargo Bank.

<sup>2</sup> The members of the New York Clearing House Association are The Bank of New York, The Chase Manhattan Bank, N.A., Citibank, N.A., Chemical Bank, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Marine Midland Bank, United States Trust Company of New York, National Westminster Bank USA, European American Bank and Republic National Bank of New York.

services in the United States, Canada, and internationally. The company is also the nation's 13th largest bank holding company.

As high-volume consumers of telecommunications services, the Financial Services Providers have a direct interest in supporting Commission actions that ensure economically efficient pricing by local exchange and interexchange carriers. The Financial Services Providers have therefore historically supported the Commission's efforts to introduce economically efficient rates and rate structures for local exchange access services. The Financial Services Providers oppose Pacific Bell's petition because (1) Pacific Bell's advocacy of a narrowly-focused proceeding to create a call set-up charge ignores the significant changes that such a revision would require in the Part 69 access elements as well as the Part 36 jurisdictional separations procedures; and (2) no immediate rulemaking is warranted.

## **DISCUSSION**

### **I. A CALL SET- UP CHARGE COULD BE ESTABLISHED ONLY AS PART OF A FAR MORE COMPREHENSIVE PROCEEDING**

**Pacific Bell** would have the Commission initiate a rulemaking to amend only Section 69.106 of the Access Rules. That section of the Rules establishes the Local Switching access rate element ("LS"), through which the local exchange carriers ("LECs") recover the interstate costs of their switching facilities. The Rule requires LECs to charge on a per minute basis for LS. LECs must compute the rate by allocating their total annual interstate LS revenue

requirement over the annual access minutes of use ("MOUs") by services that use local switching facilities.<sup>3</sup>

Pacific Bell's proposal would permit the LECs to impose both a per-minute rate and a per-call rate to recover the interstate costs of local switching facilities. Pacific Bell maintains that it incurs non-minute-sensitive, per-call costs to set up a call, regardless of the call's duration, as well as minute-sensitive costs of maintaining a call once it is established in the network. Both kinds of costs can only be recovered currently through the per minute LS charge. To prevent users who make lengthy calls (and pay more in per-minute charges) from subsidizing the per-call costs of users making short calls (whose per-minute charges allegedly aren't sufficient to cover their "call set-up" costs), Pacific Bell asks that the Commission engage in a rulemaking to revise the LS rate structure by introducing a call set-up charge that would apply on a per-call basis.

The Financial Services Providers emphatically agree with the conclusions reached by the Commission the last time a LEC sought to establish a call set-up charge within Part 69 (albeit by rule waiver). A "more comprehensive proceeding is necessary to determine whether the Commission's rules should be modified," especially "[g]iven the significant industry implications of implementing

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<sup>3</sup> Carriers subject to the Commission's price cap rules charge an LS rate originally developed with this methodology but adjusted pursuant to the index calculations required under the price cap rules. Price cap carriers also use the cost allocation rules established in Parts 36 and 69 to calculate their rates of return for purposes of the sharing and low end adjustment mechanisms established by the price cap rules. See note 5, *infra*.

a Call Setup charge.”<sup>4</sup> The Financial Services Providers believe that the narrowly-focused proceeding advocated by Pacific Bell should be rejected by the Commission for at least three reasons.

First, Pacific Bell claims that network usage patterns have changed significantly in the past ten years because users have dramatically increased their use of telefacsimile machines, paging services, credit card and check verification services, and debit card transactions.

But changes in the LECs’ network technologies used to *deliver* these services have been even more dramatic. Of particular relevance to call set-up costs is the LECs’ deployment of a Common Channel Signalling architecture (“CCS”), using SS7 software. CCS facilities are used for call set-up functions, but the LECs have themselves concluded that the costs of those facilities are only partially recoverable through the LS rate element. They have sought to recover a portion of the costs (as Part 36, C&WF Category 2 equipment) through the Part 69 Local Transport element . Thus, a rulemaking to establish call set-up charges could not focus solely on the LS element in Section 69.106, as Pacific Bell advocates, while ignoring the Transport rate elements that now appear in Sections 69.108, 110 - 112, 124, and 125. The call set-up rate element Pacific Bell proposes requires, at a minimum, an examination and re-

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<sup>4</sup> *Bell Atlantic Telephone Companies, Petition for Waiver of Sections 69.106 and 69.205 of the Commission's Rules to Permit a Call Setup Charge*, Mem. Opin. & Order, 4 FCC Rcd 7210, 7211-12 (1989).

structuring of both the LS *and* Transport access elements in order to ensure that all of the relevant costs are associated with the proper rate elements.

Second, Pacific Bell correctly notes that one of the primary objectives of the Commission's access charge regime is to ensure that the costs of providing a service are borne by the "cost causer." Therefore, it argues, the Commission should amend Section 69.106 to ensure that customers who use call set-up functions the most, and cause Pacific Bell to incur call set-up costs, pay call set-up charges.

But the Commission's commitment to cost-causative ratemaking affects not only how (and which) customers pay for service but also which costs the carriers may recover in particular charges. In other words, the Commission requires access rate structures to be reasonably related to carrier cost structures. The Commission's objective of economically efficient access pricing and cost management by carriers<sup>5</sup> would be compromised if carriers *recovered* costs from users in a manner that did not reflect the way they *incur* those costs. Any rulemaking to revise Section 69.106 as Pacific Bell requests must therefore consider necessary revisions to Subparts C and D of Part 69 (which apportion the LECs' net investment and expenses to the access elements) and Part 36 (which allocates the costs of local exchange facilities between the state and interstate jurisdiction, and thence to the Part 69 access elements) to ensure that

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<sup>5</sup> *Federal Perspectives on Access Charge Reform*, FCC Staff Analysis at 29 (April 30, 1993).

carriers recover in a call set-up charge only those call set-up facility costs that vary by call.<sup>6</sup>

This issue is especially relevant now that, as noted above, the LECs' CCS networks have assumed many of the call set-up tasks previously performed by local switches. The Access Rules, reflecting the network technologies in use at the time the Rules were adopted, assume that the local exchange has no CCS facilities and therefore do not include allocation rules for such facilities.

Finally, Pacific Bell's petition ignores jurisdictional separations issues. Pacific Bell "incurs" interstate costs only to the extent that the Part 36 Separations Rules assign those costs to the interstate jurisdiction. No change to the cost recovery mechanism established by Part 69 can affect the cost assignment mechanism established by Part 36. Thus, to realize the full economic efficiency and cost control benefits cited by Pacific Bell as a justification for its proposed rate structure, the Commission's proceeding must also consider necessary revisions to Part 36. Since Part 36 revisions require the participation of a Federal-State Joint Board, the narrowly-focused

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<sup>6</sup> Pacific Bell claims in its petition that the cost allocation methodology used to compute the local switching charge "has been largely superseded by operation of the price cap rules." *Pacific Bell Petition for Rulemaking to Amend Section 69.106 of the Commission's Rules* at 2 (June 30, 1994). While those rules permit carriers to adjust their rate levels pursuant to the price cap index computations, rather than a traditional cost allocation showing, the price cap rules have not superseded the Part 36/69 cost allocation rules. The Commission applies those rules to determine whether the LECs have over-earned or under-earned, thus triggering the sharing and low end adjustment mechanisms in the price caps rules. The Commission also retained the cost allocation rules for monitoring purposes, i.e., to monitor carrier rates of return for sharing and low end adjustment purposes, see *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6801-07 (1990), and for ARMIS reporting purposes. *Id.* at 6831-34.



proceeding advocated by Pacific Bell could not resolve the full range of issues raised by its proposed rate structure.

In short, the procedural approach reflected in Pacific Bell's petition would "cherry pick" an access issue for resolution on an isolated, ad hoc basis.

Technological and marketplace changes may well justify a comprehensive re-examination of the Commission's access charge regime, but that is not what Pacific Bell proposes. The rulemaking suggested by Pacific Bell would instead narrowly focus on a single issue concerning the recovery of a portion of call set-up costs from customers, without regard to the inextricably related issue of how those costs are incurred by the carrier. As a result, the proceeding would not ensure cost-causative rates, because its scope would be far too limited. Thus, Pacific Bell's suggested rulemaking cannot produce the very benefits Pacific Bell claims as a justification for the change.

The Commission should not permit the carriers to limit the scope of proceedings that revise only the access regime; the carriers' choice of issues will be driven by self-interest rather than the public interest. Carriers have no incentive to request access rule changes that adversely affect their revenue streams, however cost-causative they may be, and every incentive to request changes that would improve their revenues.

In order to ensure that revisions to the Access Rules serve the Commission's access charge goals, the Commission should decline Pacific Bell's invitation to fracture the access debate and thereby risk inconsistent or uninformed outcomes.

## **II. PACIFIC BELL HAS FAILED TO DEMONSTRATE ANY NEED FOR THE RULEMAKING IT ADVOCATES**

In addition to the procedural deficiencies discussed above, Pacific Bell's petition fails to demonstrate that the existing LS rate structure is deficient. For example, Pacific Bell claims that it has experienced a dramatic increase in the number of short duration calls. Pacific Bell does not, however, identify the proportion of such calls that are switched interstate calls (and therefore subject to the LS rate element) as opposed to intrastate calls, calls using dedicated access, or even local calls for which no usage sensitive rate applies.

Pacific Bell's claim that short duration calls don't recover their call set-up costs is central to its petition, yet Pacific Bell supplies no supporting data for the cost figures it uses in its discussion.<sup>7</sup>

Pacific Bell also claims to be responding to uneconomic bypass, which it claims is stimulated by inordinately high LS rates for longer calls. Pacific Bell fails to address, however, the way in which its own proposed rate structure would stimulate uneconomic bypass. The Financial Services Providers, for example, can choose from a variety of alternative technologies if Pacific Bell's access rates become unattractive as a result of rate structure changes. These include VSATs, ISDN services, special access, dual loop technology, spectrum-based services, and competing access providers, where available.

### **SUMMARY**

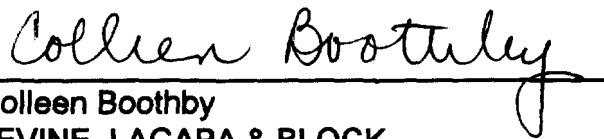
The Financial Services Providers do not oppose cost-causative rate structures. The Financial Services Providers support efforts to establish access prices that reflect real economic costs, and would support a comprehensive

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<sup>7</sup> This issue is particularly important in light of the LECs' increased use of digital switches, whose cost characteristics are considerably less usage-sensitive than traditional switching technologies.

examination of access pricing to achieve that result. The Financial Services Providers oppose Pacific Bell's petition, however, because it seeks to revise a single access rate structure in isolation from related cost, rate level, and rate structure issues that would be affected by the proposed change.

Respectfully submitted,

A handwritten signature in cursive script, reading "Colleen Boothby", written over a horizontal line.

Colleen Boothby  
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(202) 223-4980

Counsel for the California Bankers Clearing  
House, MasterCard International Incorporated,  
the New York Clearing House Association and  
Norwest Corporation

Dated: August 22, 1994

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## **CERTIFICATE OF SERVICE**

I, Leah Moebius, hereby certify that on this 22nd day of August, 1994, true and correct copies of the Opposition of the California Bankers Clearing House, Mastercard International, Inc., New York Clearing House Association and Norwest Corporation, ("Financial Services Providers") regarding Pacific Bell's Petition for Rulemaking to Amend Section 69.106 of the Commission's Rules by hand delivery, or first class mail upon the following parties:

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Nancy Woolf\*  
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Leah Moebius

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\* By first class mail

\*\*By hand delivery